

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- x
JAMES F. HEIMERLE,

Petitioner-Appellant

-v.-

UNITED STATES OF AMERICA,

Respondent-Appellee
----- x

77-2131

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APPENDIX



PAGINATION AS IN ORIGINAL COPY

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ADDRESS ALL INQUIRIES TO

Miss Korecki
Mr. Crivelli
(212) 791-0106

James F. Heimerle

Petitioner-Appellant

Docket No. 77-2131
(76 Civ. 5563)

v.

United States of America,

Respondent-Appellee

The court noting that James F. Heimerle is appealing Pro Se and being advised as to the progress of the appeal and that notice of appeal was filed on September 26, 1977

NYTXISXHEREBYXORDEREDthatthextraordinaryappealxbaffixedxwith
 thex

IT IS FURTHER ORDERED that appellant is requested to file eight (8) copies of the brief and eight (8) copies of the appendix on or before December 30, 1977

IT IS FURTHER ORDERED that if appellant's brief or appendix is not filed by the time directed, the appeal may be dismissed forthwith.

IT IS FURTHER ORDERED that ten (10) copies of the brief of the appellee shall be filed on or before January 30, 1978

IT IS FURTHER ORDERED that the additional fifteen (15) copies of the briefs required to be filed by appellee by F.R.A.P. Rule 31(b) shall be retained by counsel until final disposition of the appeal subject to the call of the court for whatever use it may direct.

IT IS FURTHER ORDERED that the argument of the appeal be ready to be heard during the week of February 13, 1978.

DATED: October 31, 1977

A. DANIEL FUSARO
Clerk

By:

Iida G. Smyer
Staff Attorney

A

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JUDGE BRIEANT

72 CRIM 1331

D. C. Form No. 100 Rev.

TITLE OF CASE		ATTORNEYS
THE UNITED STATES		For U.S.: Special AUSA
vs.		William I. Aronwald (264-3930)
1)	JOSEPH CALISE	
2)	JAMES HEIMERLE	
		For Defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 2 mailed	Clerk	12/1/72	Calise		
J.S. 3 mailed / - 2	Marshal	12/1/72	Heimerle		
Violation	Docket fee				
Title 18					
Sec. 1341 and 2, using the mails in a scheme and artifice to defraud. (cts. 2 and 3) 371 conspiracy so to do.					
THREE COUNTS					

DATE	PROCEEDINGS
12-6-72	Filed indictment and ordered sealed - F/M as to all defts. --- Motley, J.
12-7-72	Indictment ordered unsealed -- Motley, J.
12-18-72	CALISE - Deft. pleads not guilty. --- MacMahon, J.
1-19-73	Filed Governments notice of readiness for trial.
1-24-73	Heimerle-Filed notice of appearance by atty Edward A. Panzarrella. 32 Court St. Bklyn N.Y. 11201 MA 50095.
2-1-73	Calise & Heimerle-Filed affidavit and notice of motion for an order for the U.S. Atty to furnish discovery and inspection, bill of particulars, suppression etc.
3-5-73	Filed defts. memorandum of points and authorities.
3-14-73	BOTH DEFTS -Filed advt. of G. Hinckley, Special Atty. dtd. 2-21-73...

DATE	PROCEEDINGS
3-15-73	Filed govt's memorandum on points and authorities.
3-15-73	Filed Govt's memorandum of law.
3-14-73	Calise & Heimerle-Filed memorandum attached to motion dtd. 2-1-73 for Bill of particulars etc. Motion granted and denied as indicated in endorsement. Brieant, J.
3-19-73	Calise & Heimerle-Filed affidavit and order that the depts are to perform exemplars of their voices in the same manner and order as those of questioned exemplars germane to this cause., and the voices are to be performed at rm. 1307, 26 Federal Plaza 2:00 PM 3-23-73 Brieant, J.
3-19-73	HEIMERLE - Deft (att. present) pleads not guilty. Writ satisfied. Brieant, J.
3-19-73	Calise & Heimerle-Filed memo endorsed on motion for an order directing the depts to provide voice exemplars, "Motion granted order signed Brieant, J.
3-27-73	J. HEIMERLE - Filed afdvt. of G. J. Hinckley, Special Atty. dtd. 3-22-73, for a Writ.
3-30-73	J. Heimerle-Filed notice that the debt declines to submit to any voice exemplar in violation of his constitutional rights.
3-30-73	J. Calise-Filed notice that the debt declines to submit to any voice exemplar in violation of his constitutional rights.
3-16-73	JAMES HEIMERLE-Filed Writ of Habeas Corpus with Marshal's return-Writ Satisfied 2-15-73.
4-18-73	Both depts.- Filed defendants memorandum of points and authority.
4-19-73	Heimerle-Filed writ of habeas corpus dated 3-23-73 with Marshal's return 3-30-73, writ satisfied Brieant, J.
5-21-73	Calise-Filed copy of acknowledgment of debt's constitutional rights.
5-18-73	Calise (att. present) withdraws his plea of not guilty and pleads guilty to count 1 only. Pre-sentence investigation ordered. Sentence adjourned to 6/20/73. Bail continued.
	Heimerle- Trial adjourned to 9/24/73. Brieant, J.
6-14-73	Filed Transcript of record of proceedings, dated March 29, 1973.
6-20-73	JOSEPH CALISE-Filed Judgment (Atty. present) debt committed for imprisonment for a period of FIVE YEARS on ct. 1 Pursuant to Sec. 3651 of Ti. 18, U.S.C., as amended, with provisions debt be confined in a JAIL TYPE institution for a period of SIX MONTHS, as provided in the aforesaid Sec. Execution of the remainder of the sentence is suspended and debt is placed on probation for a period of 4 1/2 years, subject to the standing probation order of this Court and to commence upon expiration of confinement. This sentence is to run concurrently with the sentence imposed by Judge Carter in 72Cr. 1330 insofar as it can. Cts. 2 and 3 are dismissed on motion of debt's counsel with consent of the Govt. Deft is remanded. Brieant, J. Entered 6-22-73
6-21-73	CALISE- Filed notice of appeal to the USCA for the 2nd Circuit from judgment filed 6-20-73 (mailed copies to debt. and US Atty)

PROCEEDINGS

DATE	PROCEEDINGS
7-23-73	JOSEPH CALISE - Filed copy of judgment with marshals ret. Deft. delivered to Federal Detention Hdqtrs. Jun. 20-73.
8-2-73	Filed notice that record has been transmitted to U.S.C.A.
Sep. 18-73	JAMES HEIMERLE - Filed Affdvt. for W/H/C Ad Pros. Writ issued Ret. 9-24-73.
9-26-73	JAMES HEIMERLE - Filed notice of appearance by Gary R. Sunden, 401 B'Way., N.Y.C. 10013 925-4848.
10-26-73	JAMES HEIMERLE - Filed CJA form 20. Order appointing Gary Sunden, Esq. 401 Bway as counsel.
3-5-74	JAMES HEIMERLE - Filed affdvt. for W/H/C Ad Pros. Writ issued and Ret. 3-8-74.
4-25-74	JAMES HEIMERLE - Filed W/H/C - Writ satisfied 4-5-74. TENNEY, J.
7-8-74	JAMES HEIMERLE - Filed Affdvt. for W/H/C Ad. Pos. Writ ret. 7/22/74.
7-22-74	JAMES HEIMERLE - Deft. (Atty present, Gary Sunden) produced in Court on Writ of Habeas Corpus Ad Prosequendum. Deft. withdraws previous plea of NOT GUILTY and now pleads GUILTY to Count 2 only. Writ adj'd until 7-23-74 --Brieant, J.
7-23-74	JAMES HEIMERLE - Filed Judgment and Order of Probation. It is Adjudged that the Imposition of sentence on Count 2 is suspended. Deft. is placed on probation for a period of FOUR (4) YEARS, subject to the standing probation order of this court. Deft's probation is to commence upon expiration of confinement imposed by Judge Carter on June 18, 1973 in 72 CR. 1330. Counts 1 and 3 are dismissed on motion of Deft's counsel with the consent of the Government. --BRIEANT, J.
7-26-74	JAMES HEIMERLE - Filed Writ of Habeas Corpus directed to Warden, Greenhaven Correctional Facility, Greenhaven, NY, with Marshal's return - Writ satisfied 7-23-74 --BRIEANT, J.
8-29-74	Filed transcript of record of proceedings dated 7-22-74
7-24-74	J. HEIMERLE - Mailed original CJA copy 1 to the A.O. Wash. D.C. for payment...Brieant, J.

72 CRI. 1 330

Form No. 100 Rev.

TITLE OF CASE

THE UNITED STATES

29.

ATTORNEYS

For U.S.: Special AUSA

William I. Aronwald (26L)

1) VINCENT RIZZO

2) MATTEO DI LORENZO

3) SAM SALLI

4) JAMES HEIMERLE

5) JOSEPH CALISE

6) WILLIAM MUZONO

For Defendant: _____

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.
J.S. 2 mailed	Clerk	6/17/73	Mackowiak	5 -
J.S. 3 mailed <i>see Diffs</i>	Marshal	6/19/73	Theas	✓ -
Violation	Docket fee	6/17/73	Hennrich	✓ -
Title 18.	V.RIZZO-Fined \$5,000.	6/17/73	Treas	✓ -
	M.DiLORENZO-Fined \$10,000.	6/17/73	Theas	✓ -
	J.CALISE-Fined \$1,000.	6/17/73	Theas	✓ -
	W.Mizono-Fined \$5,000.	6/17/73	Theas	✓ -
Sec. 472 and 2 uttering counterfeit Fed.Res.Notes (ct.2) - 473 and 2 dealing in counterfeit Fed.Res.Notes (ct.3) - 371 conspiracy so to do (ct.1) --THREE COUNTS--		6/17/73	Hong	5 -
		6/17/73	Theas	✓ -
		6/17/73	Ocker	✓ -
		6/17/73	Theas	✓ -
		6/17/73	Mizono	5000 -
PROCEEDINGS				
12-6-72	Filed Indictment and ordered sealed. - B/W as to all depts. -- Motley, J.			
12-7-72	Indictment ordered unsealed. Di Lorenzo 10,000 -- Motley, J.			
12-7-72	M. Di Lorenzo - Filed warrant for arrest with Marshals return - executed on 12-7-72 (Order Full)			
12-7-72	M. Di Lorenzo - pleads not guilty (David M. Markowitz of counsel) Deft. orde fingerprinted and photographed. 10 days for motions. Bail in the amount of \$50,000. Remnded in lieu of bail. -- Motley, J.			
12-7-72	M. Di Lorenzo - Filed notice of appearance by David M. Markowitz, Esq. 261 Broadway, NYC (Phone 233-4290)			
12-12-72	Di Lorenzo-Filed following papers from Magistrate,docket sheet, appearan bond.			
12-15-72	Di LORENZO - Filed remand dated 12/7/72 & released on bail 12-8-			

DATE	PROCEEDINGS
12-18-72	Deft. W. Mizono - pleads not guilty (Atty. present). Bail continued \$25,000. Joseph Calise - Deft. pleads not guilty. MacMahon, J.
12-18-72	Mizono- Filed notice of appearance by Herbert Monte Levy, Esq., 295 Madison Ave.-New York, N.Y. (689-2220)
12-20-72	Vincent Rizzo - Bail fixed in the amount of \$25,000.00 on each of four indictments, -- MacMahon, J.
12-29-72	Rizzo-Filed papers rec'd from Magistrate, docket sheet, appearance bond.
1-5-73	Calise- Filed affirmation and notice of motion for discovery and inspect. and for a bill of particulars.
1-5-73	Salli-Deft. produced on warrant (atty. present) Deft. arraigned pleads not guilty. Bail fixed at \$2,500.00. Deft. ROR until 4 P.M. 1-5-73. Carter, J.
1-5-73	<i>HEIMERLE- Filed affidavit of order to produce Ret. 1/18/73.</i>
1-8-73	Filed order extending bail limits of Vincent Rizzo to Eastern N.Y.-Bryan, (filed 72cr1329)
1-10-73	MIZONO- Filed affdvt. and notice of motion for transfer and to compel election - ret. 1-19-73
1-10-73	MIZONO- Filed affdvt. and notice of motion for discovery and inspection - ret. 1-19-73
1-10-73	MIZONE- Filed affdvt. and notice of motion for a bill of particulars - ret. 1-19-73
1-10-73	MIZONE- Filed affdvt. and supplemental notice of motion for discovery & inspection - ret. 1-19-73
1-8-73	<i>Rizzo- Filed Warrant for arrest on Marshal's return executed 12/19/72.</i>
1-10-73	M. DILORENZO) V. RIZZO) Filed affdvt. & notice of motion for bill of particulars & for discovery S. SALLI) and inspection.... Ret. 1-19-73..
1-11-73	Salli-Filed papers rec'd from Magistrate, Docket sheet, appearance bond in the amount of \$2,500.
1-16-73	Mizono- Filed memorandum of law in support of motions for bill of partici for severance and transfer, for election of charges, and for pre- trial discovery.
1-19-73	Filed Government's notice of readiness for trial.
1-23-73	Fan-Filed affidavit for writ of habeas corpus writ issued ret 1-25-73
1-30-73	Heimerle-Filed affidavit and notice of motion for discovery and inspect: bill of particulars, and for enlargement of time.

CONT'D

DATE	PROCEEDINGS
2-5-73	M.Di LORENZO - Filed order extending bail limits to include the Southern District of Florida from 2-14-73 to 2-24-73....Carter, J.
2-28-73	Salli-Filed warrant for arrestexecuted 1-5-73
3-16-73	WILLIAM MIZONO-Filed Opinion #39319..deft and other defts move for bills of indictment. **Granted in parts and denied in parts***The Govt is ordered to decide between substantive and conspiracy cts. it chooses to prosecute***No convincing argument has been made to order a transfer of prosecution to San Francisco and serve (Mailed notice)
*****1-18-73	Deft James Heimerle(atty present Edward A. Panzarella) produced and arraigned, deft waives reading of indictments, deft pleads not guilty to both indictments, motions returnable on or before Feb. 1, 1973. Indictment 72 Cr 1331 unrelated Carter, J.
3-22-73	Filed Govt's notice of motion on deft Mizono's motion to compel election between the conspiracy and substantive counts in the indictment.
3-26-73	Conference held for setting trial date, Trial to begin May 2, 1973 10AM Carter, J.
4-5-73	MATTEO DI LORENZO - Filed afdvt. & notice of motion for an order suppressing evidence. Filed copy of Eavesdropping Warrant & afdvts..
4-6-73	Filed Governments supplemental memorandum of points and authority.
4-19-73	Mizono- Filed memo endorsed on Governments motion filed 3-22-73: ".....In absence of special circumstances brought to the court's attention at or before which indicate that prejudice to defendants is more likely than it now the Government will be permitted to try the substantive and conspiracy counts simultaneously. The order of 3-15-73 is withdrawn to the extent that it conflicts with this decision. So ordered. - Carter, J. (m/n)
4-30-73	Heimerle-Filed Govt's affidavit for writ, ret 5-3-73.
5-2-73	J. HEIMERLE) Filed affirmation & notice of motion to dismiss the indictment.

DATE	PROCEEDINGS
5-7-73	Calise-Filed affirmation in connection of the pending motion to suppress as evidence all conversations obtained as a result of the interception of wire communications.
5-7-73	Heimerle and Calise- Filed notice of motion for an order to suppress.
5-9-73	Rizzo-Filed CJA appointment of Robert Mitchell as counsel 51 Chambers. Cart
5-9-73	Rizzo-Filed affidavit of financial affidavit status.
5-2-73	Hearing begun as to all defendants. Heimerle produced on a writ. Deft. Rizzo in custody.
5-3-73	Hearing continued and concluded. Decision Reserved.
5-3-73	Jury trial begun before Carter, J. as to all defendants.
5-4-73	Trial continued.
5-7-73	Trial continued.
5-8-73	Trial continued.
5-9-73	Trial continued.
5-10-73	Trial continued.
5-11-73	Trial continued and concluded.
	Jury verdict as follows:
	Rizzo. Guilty on counts 1 and 2 Not Guilty on count 3.
	Di Lorenzo -Guilty on count 1 and Not Guilty on counts 2 and 3.
	Salli- Guilty on counts 1 and 2 and Not Guilty on count 3.
	Heimerle-Guilty on counts 1 and 2 not guilty on count 3.
	Calise- Guilty on counts 1 and 2 not guilty on count 3.
	Mizono- Guilty on count 1 and not guilty on counts 2 and 3.
	Pre-sentence investigations ordered as to all defendants. Defts's motions reserved until May 23, 1973. Sentencing as to all defendants except Salli June 15, 1973 at 10 A.M., Deft. Salli sentencing June 25, 1973 at 11 A.M. room 1306. Present bail conditions continued.
	Carter, J.
5-14-73	Filed Transcript of record of proceedings, dated 5/13/73
5-14-73	Filed Transcript of record of proceedings, dated 5/14/73
5-14-73	Filed Transcript of record of proceedings, dated 5/17/73
5-14-73	Filed Transcript of record of proceedings, dated 5/18/73
5-14-73	Filed Transcript of record of proceedings, dated 5/19/73

DATE	PROCEEDINGS
5-14-73	Filed the following papers received from the chambers of Carter, J.
	Docketed memorandum of deft. William Mizono in support of motion to suppress evidence, dtd. 4/20/73.
	Docketed deft's Mizono reply memorandum, dtd. 5/1/73.
	Docketed Govt's memorandum in opposition, dtd. 4/26/73.
	Docketed Govt's memorandum.
	Docketed Mizono's memorandum of law Re (1) Govt. motion to compel voir examplars and)2) Govt's motion for reargument of court order requiring election of counts, dtd. 4/5/73.
	Docketed Deft. Mizono memorandum of law, 2/7/73.
	Docketed Govt's memorandum of law. dtd. 4/5/73.
	Docketed deft's Mizono answering memorandum of law re Govt's motion for reargument of court order requiring election of counts, 4/11/73.
	Docketed Govt's memorandum of law, dtd. 1/22/73.
	Docketed Deft. Mizono reply memorandum.
	Deft. Salli's request to charge, dtd. 5/1/73.
	Docketed deft. Salli's supplemental requests to charge.
	Docketed deft. Salli's trial memorandum, 5/1/73.
	Docketed Govt's request to charge, dtd. 5/10/73.
	Docketed Deft's Salli motion to suppress, dtd. 5/1/73.
	Docketed affidavit in opposition of motion to suppress.

DATE	PROCEEDINGS
5-21-73	J. CALISE) Filed notice of motion for an order setting aside the verdict of the J. K. HEIMERLE) trial jury..and for a verdict of acquittal.....
5-9-73	Rizzo-Filed appointment of CJA court reporters for minutes. Carter, J.
5-9-73	Salli-Filed CJA appointment of Court reporters for minutes. Carter, J.
5-22-73	Salli- Mailed CJA 21 on Francis D. Murphy handwriting exper' to the A.O.
5-22-73	Salli- Filed appointment of Francis D. Murphy as handwriting expert 198 B
6-12-73	Filed Memorandum and order on defts Rizzo, DiLorenzo, Calise, Heimerle and motion to set aside the verdict of the Jury, "The Court reserved judgment on that motion. After consideration, that motion as to each deft is denied, including the deft Mizono. So Ordered Carter, J.
6-18-73	Rizzo-Mailed Copy I of the CJA appointed Court Reporters dtd 5-4-73 to the A.O. for payment. Carter, J.
6-18-73	Salli-Mailed Copy I of the CJA Court Reporters appointed 5-4-73, to the for payment. Carter, J.
6-18-73	Di Lorenzo-Filed notice of appeal to the USCA for the 2nd Circuit from from judgment of the USDC entered 6-18-73. \$5. pd. (notices mailed to the AUSA and deft.)
5-21-73	SAM SALLI-Filed CJA 23 Affidavit of Financial affidavit.
5-25-73	VINCENT RIZZO-Filed memorandum in support of motion to set aside verdict.
6-12-73	SAM SALLI-Filed affidavit & notice of motion for a Judgment of acquittal-Rec'd 5-
6-12-73	SAM SALLI-Filed memorandum of law in support of motion for Judgment of acquittal(rec'd 5-
6-12-73	WM. MIZONO-Filed motion for a new trial.(rec'd 5-22-73)
6-12-73	WM. MIZONO-Filed memorandum in support of motion for new trial (rec'd 5-22-73)
6-12-73	MATTEO DILORENZO-Filed memorandum in support of motion to set aside verdict.(
6-12-73	WM. MIZONO-Filed Gov't affidavit in opposition to motion for a new trial(rec'd 5-25-73)
6-12-73	MATTEO DILORENZO-Filed Gov't affidavit in opposition to motion for a new trial(rec'd 5-25-
6-12-73	SAM SALLI-Filed Gov't affidavit in opposition to motion to set aside verdict.(rec'd 5-25-7
6-12-7	HEIMERLE, CALISE-Filed Gov't affidavit in opposition to motion to set aside verdict(rec'd

DATE	PROCEEDINGS
6-18-73	VINCENT RIZZO - Filed Judgment (#73,560) Atty. present, debt is committed for Imprisonment for a period of 5 YEARS on ct.s 1 & 2 to run concurrently with each other and concurrently with the sentence the debt is presently serving. Debt is FINED \$5,000.00 on ct. 1. The debt is remanded. Present bail condition Cont'd. Presently pending appeal... The debt advised of his right to appeal..... Carter, J..... Entered 6-25-73----
6-18-73	MATTEO DILORENZO - Filed Judgment (#73,557) Atty. present, debt is committed for Imprisonment for a period of ONE YEAR on count 1, and FINED \$10,000.00. If the fine is not paid as directed, the debt is to be committed until the fine is paid, or he is otherwise discharged according to law... Present bail condition cont'd pending appeal... The debt advised of his right to appeal... Carter, J..... Entered 6-25-73----- /deft on a writ.
6-18-73	JAMES HEIMERLE - Filed Judgment (#73,560) Atty. present, debt is committed for ONE YEAR on each of ct.s 1 & 2, to run concurrently with each other. Sentence to commence upon his release from confinement under State sentence debt is presently serving at NEW York State Penitentiary, Greenhaven, New York. Debt is FINED \$1,500.00 on ct. 1 only. If the fine is not paid as directed, the debt is to be committed or he is otherwise discharged according to law. Debt advised of his right to appeal..... Carter, J..... Entered 6-25-73----- X (#73,554)
6-18-73	JOSEPH CALISE - Filed Judgment (Atty. present) debt is committed for imprisonment for a period of THREE YEARS on ct. 1. Pursuant to Ti. 18, U.S. Code, Sec. 3651, on condition that he serve SIX MONTHS in a jail type institution, execution of remainder of sentence is suspended - Probation (supervised) TWO & ONE HALF YEARS to begin at the end of the jail sentence. FINED \$1,000.00, committed fine. Imposition of sentence on count 2 is suspended... Court requests periodic probation reports (quarterly). Present bail condition continued pending appeal. The debt advised of his right to appeal..... Carter, J..... Entered 6-25-73-----
6-18-73	WILLIAM MIZONO - Filed Judgment (#73,558) Atty. present, the debt is committed for imprisonment for a period of THREE YEARS. Execution of prison sentence suspended. Debt is placed on supervised probation for a period of THREE YEARS. Debt is fined \$5,000.00 a committed fine. Fine to be paid on or before Sept. 18, 1973 - The Court requested periodic Probation reports (quarterly).... Carter, J... Entered 6-25-
6-25-73	SAM SALLI - Filed Judgment (Atty. present) debt is committed for imprisonment for a period of TWO YEARS on each of counts 1 & 2, to run concurrently. Present bail condition cont'd. pending appeal..... Carter, J..... Entered 6-26-73-----
6-21-73	CALISE - Filed notice of appeal to the USCA for the 2nd Circuit from judgment entered 6-18-73 (mailed copies to debt. and US Atty.)
6-21-73	HEIMERLE - Filed notice of appeal to the USCA for the 2nd Circuit from judgment entered 6-18-73 (mailed copies to debt. and US Atty.)
6-25-73	SAM SALLI - Filed notice of appeal to the USCA for the 2nd Circuit from judgment entered on 6-25-73 (mailed copies to debt. and US Atty.)
6-28-73	Mizono - Filed notice of appeal to the USCA for the 2nd Circuit from the judgment entered 6-18-73. (fee paid \$5.) (Copies mailed to debt and US Atty.)

CRIM 13

DATE	PROCEEDINGS
6-28-73	Rizzo-Filed notice of appeal to the USCA for the 2nd Circuit from the judgment entered 6-18-73. (Leave to appeal in forma pauperis is hereby granted. Carter, J. (mailed copies to deft. and U.S. Atty.))
7-5-73	Di Lorenzo-Filed order signed by Judge Carter, dtd. 7-3-73, extending bail limits.
6-28-73	Salli-Filed appointment of Counsel under CJA Stanley Arkin 300 Madison Ave. N.Y.C. Cart
7-12-73	Salli-Filed appointment of Court reporters under CJA. Carter, J.
7-13-73	Salli-Filed Appointment of CJA dtd. 3-28-73 appointing Stanley S. Arkin counsel 300 Madison Ave. Carter, J.
7-13-73	Salli-Mailed Copy I of the CJA to the A.O. for payment. Carter, J.
7-18-73	Salli-Filed affidavit and notice of motion for an order vacating the judgment and conviction.
7-18-73	Filed Transcript of record of proceedings, dated May 2, 3-1973
7-18-73	Filed Transcript of record of proceedings, dated June 25, 1973
7-19-73	Salli-Filed memo endorsed on motion dtd 7-18-73, This motion previously denied in open court. Carter, J.
7-23-73	JAMES HEIMERLE. Filed WRIT OF HABEAS CORPUS AD PROSEQUENDUM & allowed by Judge Ryan.
7-23-73	VINCENT RIZZO. Filed Commitment & entered return, Deft. Delivered to the Detention Hqtr.
7-23-73	JOSEPH CAUSE. Filed Commitment & entered return, Deft. Delivered to the Detention Hqtrs.
7-31-73	Salli- Filed deft's reply affidavit.
7-31-73	SAM SALLI. Filed REPLY AFFIDAVIT by Stanley S. Arkin, attorney for the petitioner.
8-3-73	ALL DEFENDANTS. Filed NOTICE TO THE DOCKET CLERK: record on appeal has been certified and transmitted to U.S.C.A., Second Circuit, on this
8-1-73	Salli-Filed memo endorsed on motion dtd. 7-18-73, Motion denied. Carter, J.
8-31-73	Salli-Filed Govt's memorandum of law.
8-31-73	Salli-Filed Govt's affidavit by Edward Shaw.
9-10-73	Sam Salli-Filed notice of appeal to the USCA for the 2nd Circuit from an order from the USDC for SDNY, rendered on the 1 day of Sept. 1973 by the Hon. Robert L. Carter, denying deft's motion made pursuant to 28 U.S.C. 2255 for an order vacating the judgment of conviction entered against him. (copies mailed to US. Atty. and deft's atty.) 9-11-73.

DATE	PROCEEDINGS
9-17-73	Chikofsky-Filed memo. endorsed on def't's motion for leave to appeal in forma pauperis. Application approved by Carter, J. (n/m)
9-17-73	ALL DEFENDANTS: Filed MOTION FOR MODIFICATION OF SENTENCE and a AFFIDAVIT (signed by William Mizono) from Herbert Monte Levy, (295 Madison Ave., New York, N.Y. 10017. Telephone: (212) 689- and Herbert W. Yanowitz (105 Montgomery Street, Suite 1100, San Francisco, Cal. 94104. Telephone: (415) 362-1365).
9-19-73	WILLIAM MIZONO: Fine marked satisfied and entered in money judgment book. (N)
9-21-73	James Heimerle-Filed notice that the supplemental record on appeal has been certified and transmitted to the U.S.C.A.
10-2-73	Rizzo, Di Lorenzo, Salli, Heimerle, Carter & Mizono-Filed notice that the supplemental record on appeal has been certified and transmitted to the U.S.C.A.
10-2-73	Salli-Filed notice that the record on appeal from motion to vacate judgment has been certified and transmitted to the U.S.C.A.
10-5-73	Rizzo-Mailed copy I of the CJA 20 to the A.O. for payment. Carter, J.
10-12-73	<i>Filed Transcript of record of proceedings, dated May 11, 1973</i>
10-12-73	Salli-Filed notice that the supplemental record on appeal has been certified and transmitted to the U.S.C.A.
10-10-73	VINCENT RIZZO: Filed Copy 5 of CJA 20 of APPOINTMENT (254989). Approved for payment by: (not indicated). Amount approved: (not indicated). Payee: Gilbert Epstein, 253 Broadway, New York, N.Y. 10007.
10-30-73	JAMES HEIMERLE: Filed Copy 5 of CJA 21 AUTHORIZATION for pre-trial transcript for purposes of appeal. Authorized by: Judge Carter. Approved for payment by: (not indicated). Amount approved: (not indicated). Payee: Southern District Court Reporters.
11-28-73	Heimerle-Filed and mailed copy 1 of the CJA 21 for authorization for court report to the A.O. Carter, J.
12-5-73	<i>Filed Transcript of record of proceedings, dated June 18, 1973.</i>
1-8-74	Filed Stip. designations re: exhibits to be transmitted to USCA
Jan 8-74	Filed Supplemental record on appeal case transmitted to the U.S. (DILorenZO)
Jan 25-74	Filed Order that the bail limits as prescribed in def't's bail be hereby extended to include Southern District of Fla. from to 2/23/74 - further order that the def't shall abide by and comply with terms and provisions of his bail bond and def't. shall not depart from S.D. and E.D. of N.Y. except as aforesaid. Further ordered that the def't. shall return to SDNY and appear before this Court within 24 hours of receipt of his atty. who has filed a Notice of Appearance herein of a written communication to that effect from U.S. Atty. - Carter, J. (m/N)

-13-

1330

DATE	PROCEEDINGS
5-25-74	MATTEO DI LORENZO - Filed Notice of Motion and Affidavit returnable 5/31/74 at 10:00 A.M. for an order reducing sentence imposed etc.
	Government.
5-2-74	Matteo DiLorenzo - Filed Affidavit in opposition to the motion by deft. for an order to reduce sentence, imposed
5-20-74	MATTEO DI LORENZO - Filed memo-endorsed on motion dtd. 4/25/74 -- Motion denied - Carter
5-14-74	<i>DiLorenzo</i> Filed Commitment & entered return, Deft. Delivered to the Prisoner's Dept. 5-6
5-16-74	<i>Salli</i> Filed Commitment & entered return, Deft. Delivered to the Prisoner's Dept. 5-6
5-6-74	MATTEO DeLORENZO - Defendant surrendered for service of sentence.
5-6-74	SAM SALLI - Defendant surrendered for service of sentence.
Jun 10-74	MATTEO DiLORENZO - Fine marked satisfied and entered in money judgment book. Carter, J.
Jun 21-74	VINCENT RIZZO - Filed copy of order by Supreme Court of the US That on Petition v. for Writ of Certiorari the the US Court of Appeals for the Second Circuit. On Consideration of the petition for a writ of certiorari herein to the USCA for the Second Circuit, it is ordered by this court that the said petition be, and the same is hereby, denied. m/n
Jun 21-74	MATTEO DiLORENZO - Filed copy of order by Supreme Court of the US that on Petition for Writ of Certiorari is denied. m/n
Jun 21-74	SAM SALLI - Filed copy of order by Supreme Court of the US that on Petition for Writ of Certiorari is denied.
Sep. 16-74	MATTEO DI LORENZO - Filed Notice of Motion returnable 9/27/74 at 10AM as counsel can be heard for an order reducing the sentence imposed
Oct 3-74	SAM SALLI - Filed memo-endorsed on letter dtd 9/17/74 -- The motion is denied - So order CARTER, J. (m/n)
10-9-74	DI LORENZO - Filed Affidavit of Barbara S. Ambler, in opposition to deft motion.
10-9-74	DiLORENZO - Filed Memo endorsed re: above -- Motion denied - So order Carter, J. (m/n)
5-30-75	<i>Calise, J. 40-</i> <i>DiLorenzo 40-</i> <i>#75, 394</i> JAMES HEIMERLE - Filed AMENDED JUDGMENT--The deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment and the judgment of June 18, 1973 is amended as follows. The deft. is to serve ONE(1) YEAR and ONE(1) DAY on each of ets. 1 and 2 to run concurrently with each other. Sentence to commence u his release from confinement under State Stentnce. Deft. is fined \$1,500 on ct. 1 only. If the fine is not paid as directed, the deft to be committed or she is otherwise discharged according to law. Carter, J. (copies issued)
4/4/75	<i>Heimerle</i> - Filed commitment & entered return, Deft. delivered to <i>Liberty</i> 70# on 3/3

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Order Judgment
04-30-75	HEIMERLE--Filed defts. letter dated April 21, 1975 for increase of sentence as indicated.	
05-02-75	HEIMERLE--Filed endorsement--****It is in the expectation and on the condition that deft. will become eligible for earlier release as a result of this action that I grant his unusual request for an increase in each of his two concurrent federal sentences from one year to one year and one day. The judgment is ordered amended accordingly. So ordered, Carter, J. (pro se for notices)	
07-11-75	JAMES HEIMERLE--Filed defts. affdt. and notice of motion for correction of judgment.	
07-11-75	JAMES HEIMERLE--Filed memo end. on above motion--Motion Granted. Transcript reflects that sentence imposed in open court was one yr. imprisonment and fined \$1,500. The judgment is ordered amended accordingly to delete the following: "if the fine is not paid as directed, the deft. is to be committed or he is otherwise discharged according to law. So ordered, Carter, J. (to pro se for notices)	
07-15-75	JAMES HEIMERLE--Filed AMENDED JUDGMENT #75,394 the deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for one year and 1 day on each of cts. 1 and two to run concurrently with each other. Sentence to commence upon his release from confinement under state state sentence. The deft. is fined \$1,500 on ct. 1. only. Carter, J. (copies issued)	
7/25/75	J. Heimerle - ^{amended} Filed commitment & entered ^{by mail to Fed. Corr.} ^{Dist., Danbury, Conn.} on 7/16/75.	
08-11-75	Heimerle- Fine marked satisfied and entered in money judgment book.	
03-17-76	WILLIAM MIZONO-Filed Probation form 22 of Transfer of jurisdiction to the Northern District of California.	
6-11-76	WILLIAM MIZONA- Filed acknowledgment of receipt of deft's record by No. Dist. of Calif. -San Jose (Their # Cr.76-145)	

DATE

PROCEEDINGS

Trans

7/29/75	Heimerle	1500-
7/31/75	Treas.	1500-
9/4/75	(pd. in full)	
9/5/75	Calise	20-
11/2/75	Treas.	20-
1/13/76	Calise	25-
2/16/76	Treas.	25-
2/10/76	Calise	25-
3/12/76	Treas.	25-
3/16/76	Calise	20-
4/21/76	Treas.	20-
4/22/76	Calise	20-
5/13/76	Treas.	20-
5/12/76	Calise	20-

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FILED 16
12-16-76
S D of NY

JAMES HEIMERLE,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

Pro Se 76 Civ. 5563-C

MEMORANDUM AND ORDER

Brieant, J.

James Heimerle, a federal prisoner now confined at Manhattan Correctional Center, seeks a writ of habeas corpus pursuant to 28 U.S.C. §2255.

The facts are directly known to the Court and are not in dispute. On December 6, 1972, petitioner and another were indicted under docket No. 72 Cr. 1331-CLB, for two substantive counts of mail fraud, and one count charging conspiracy so to do, committed on or about March 1, 1972.

At the time the indictment was filed, Heimerle was in state custody, awaiting sentence on an unrelated state crime. On December 13, 1972 he was sentenced in state court to a four year term. He was thereafter confined at Sing Sing Prison, now in newspeak called the Ossining Correctional Facility, located about an hour's travel from our Courthouse.

His federal prosecution followed the regular course 17
as shown by the docket sheet in 72 Cr. 1331-CLB. He appeared
in absentia on January 24, 1973 by attorney Panzarella. He was
arraigned in person on March 19, 1973 and pleaded not guilty.
Thereafter, he attended at least one pre-trial conference before
me and was present in person in this Court on July 22, 1974 for
a change of plea on Count 2 from not guilty, to guilty, and in
reliance on a presentence report previously prepared for another
case, was sentenced, on July 23, 1974. Imposition of sentence
was suspended, and Heimerle was placed on probation for a period
of four (4) years to commence upon expiration of a prison sentence
previously imposed by Judge Carter of this Court in 72 Cr. 1330-P
in which case Heimerle received a sentence of one (1) year and a
day and a fine, to commence following the state sentence of
December 13, 1972.

On June 15, 1976, Heimerle was sentenced by Judge Metzner
of this Court in 76 Cr. 146-CMM to a term of imprisonment of seven
(7) years to be followed by five (5) years probation, following
conviction on four (4) counts.

On November 15, 1976, Heimerle was sentenced by Judge
Pollack of this Court in 76 Cr. 442-MP, to a prison term of ten
(10) years to follow (consecutively) the sentence by Judge Metzner
imposed on June 15, 1976, such sentence also to be consecutive to

any sentence he may receive in a pending probation violation charge now sub judice before Judge Pollack.

On each of Heimerle's appearances before me with respect to 72 Cr. 1331-CLB, between indictment and sentence, his presence was obtained by federal writ of habeas corpus ad prosequendum, issued in the same form used since about 1790. The Court satisfied the writs after each appearance and allowed Heimerle to return to Sing Sing between court dates, and after imposition of sentence.

This was humane and proper. It assured no interruption or loss of time, good time, privileges or prison earnings on his state sentence. He had adjusted well to the structured life and programs in that institution, and in view of its nearby location, no purpose would have been served to pull him out and house him in a federal facility for the indefinite period between indictment and final disposition.

This Court never believed, prior to May 17, 1976, that enactment by Congress in 1970 of the Interstate Agreement on Detainers would be held to affect the time honored procedures followed in this case. But see United States v. Mauro, 414 F.Supp 358 (E.D.N.Y. 1976), aff'd. October 26, 1976 (2d Cir. Dkt. 76-125 1252).

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It is on the basis of Mauro that Heimerle now seeks his release. Familiarity with the opinion of the Court of Appeals in that case is assumed.

It has been said that those who enjoy sausage, and remedial legislation, should never watch it made. Often, in the sausage making process, too much offal can get into the grinder. When this happens, usually the cook adds spices and salt to correct the problem. When, as recounted in Mauro, the same thing happens with remedial legislation, a court usually places a gloss on the statute, so as to avoid an untoward result.

Those of us who respect the constitutional separation of powers, and hold that the federal courts need not take over every function of government, recognize the right of the legislative branch to be wrong. Congress knows how to legislate with specificity, and can use plain English. In penal matters the rules of strict construction and reliance on plain meaning are particularly appropriate.

As the Court of Appeals said in Mauro (p. 277):

"If the United States is to succeed in establishing that the Congress only intended to cover state detainers and not federal detainers, this would certainly represent such a major and substantial departure from the all embracing language employed in Article II, that any contrary intention

should be clearly established in the legislative history of the enactment. We have carefully reviewed that history and there is not a single mention of the United States participating only in its capacity as a sending State until the Senate Committee Report on the proposed Justice Reform Act of 1975 (S. 1). This reflects, in our view, a recognition by some members of the Congress that perhaps the Congress should not have acted as it did--that the sanctions of Article IV in particular are discomfiting to the Government. However, it is not our role to extricate the United States from the unequivocal terms of the Agreement enacted by the Congress." (Emphasis added).

The Court of Appeals having declined to put a gloss on the statute, to save our time honored and reasonable use of the ancient writ ad pros., Heimerle must go free, at least as to the judgment entered by me on July 23, 1974.

That neither he nor his lawyer protested when the successive writs were satisfied cannot be regarded as a waiver. Waiver is the intentional relinquishment of a known right. Prior to the decision of Judge Bartels on May 17, 1976, who could have known?

The petition is granted, and it is ordered that the writ shall issue. The operation of such order, and the actual issuance of the writ are stayed pending appeal, unless the Court of Appeals

shall otherwise direct.

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So Ordered.

Dated: New York, New York
December 15, 1976

CHARLES L. BRIEANT

Charles L. Briant.
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
JAMES F. HEIMERLE,
:
Petitioner,
:
-against-
:
UNITED STATES OF AMERICA,
:
Respondent.
-----X

Pro Se 76 Civ. 5563-CLB

MEMORANDUM AND
ORDER ON REARGUMENT

Bricant, J.

Familiarity is assumed with our prior opinion dated December 15, 1976. The Government has sought reargument, and reargument has been granted.

We lay to rest first any suggestion on the part of the Government that the Memorandum and Order of this Court, sought to be reargued here, was granted "without the benefit of the filing of a response by counsel for the United States." As is the Court's usual practice with federal prisoner motions and petitions, a telephone call was made to the U. S. Attorney's Office by a member of staff, inquiring whether the U. S. Attorney's Office desired to file any response to the papers filed by Heimerle. This telephone communication elicited the not unusual response that the Government did not wish to answer unless the Court desired that it do so. The Court, regarding the issue presented as clear,

proceeded accordingly.

It turns out that the perceived simplicity of the issue did not exist.

The prior opinion of the Court was correct, insofar as it goes. Certainly a waiver is nothing more than the intentional relinquishment of a known right, and there was no waiver on Heimerle's part simply by the fact that he permitted the successive writs ad prosequendum to be satisfied, and was returned to the Ossining Correctional Facility without protest on his part.

There is, however, another point to the case which was not elicited in the prior proceedings, and did not come to the attention of this Court until reargument, that is, that Heimerle pled guilty to the charges. This distinguishes the cases relied on, including the subsequent case of United States v. Ford, Dkt. No. 76-1319, 2d Cir. February 3, 1977.

A knowledgeable plea of guilty waives all remedies, and admits guilt. Taking such a plea includes an assumption of risk by the defendant of any error in either his or his attorney's assessment of the law and facts. McMann v. Richardson, 397 U.S. 759 (1970); Brady v. United States, 397 U.S. 742 (1970).

Here, Heimerle lost out with respect to a right which

no person skilled in the law then would have imagined existed in his favor. Had he gone to trial on the merits and been convicted, the Court would believe that this right was still preserved to him, and would adhere to its prior decision. The defense of waiver would have no meaning, in connection with the acquiescence by Heimerle in the procedure, actually beneficial to him, involved in the satisfaction of the successive writs, discussed more fully in the Court's prior opinion.

But, there is a different waiver present in the taking of a knowledgeable plea of guilty, intelligently and intentionally given, as in fact happened in this case. The entry of the plea of guilty in the Court is sufficient to end the matter, and does constitute a waiver of the rights granted under the Mauro decision.

Accordingly, the Court's decision and order dated December 15, 1976 is in all respects vacated, and it is determined that all relief shall be denied with respect to the petition herein.

The Clerk shall enter judgment to that effect, pursuant to Rule 58, F.R.Civ.P.

So Ordered.

Dated: New York, New York
July 6, 1977

CHARLES L. BRIEANT

Charles L. Brieant
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JAMES HEIMERLE,

Petitioner,

-v-

UNITED STATES OF AMERICA,

Respondent.

76 Civ. 4277
76 Civ. 5669

#46051

JUN 22 2 02 PM '77

A P P E A R A N C E S:

JAMES HEIMERLE, Pro se
150 Park Row
New York, New York

HON. ROBERT B. FISKE, JR.
United States Attorney for the
Southern District of New York
One St. Andrew's Plaza
New York, New York 10007
by: BARBARA AMBLER
Special Attorney
Attorney for the United States
of America

MICROFILM

JUN 22 1977

CARTER, District Judge

OPINION

The petition to reconsider is granted. The defendant moved under 28 U.S.C. § 2255 to vacate his sentence and dismiss the indictment because of the government's lack of compliance with Article IV of the Interstate Agreement on Detainers Act (Pub. L. No. 91-538, §§ 1-8, 84 Stat. 1397 (1970) reprinted in 18 U.S.C. App. at 207 et seq.). On March 2, 1977, I denied the motion on the ground that the defendant had been brought to trial within 120 days after the federal government acquired custody of him from the state as required under Article IV(c) of the Detainers Act.

In his petition for rehearing, the defendant argues that the violation by the government which he claims entitled him to have the indictment dismissed is that he was returned to state custody without being tried on this indictment after detainers had been filed by the government and after he had been delivered into federal custody, not that the government failed to bring him to trial within the 120 days.

On reconsidering United States v. Mauro, 544 F.2d 588 (2d Cir. 1976), particularly in the light of United States v. Cyphers, ___ F.2d ___, Nos. 76-1131, 76-1160, Slip. Op. 1737-1752 (2d Cir. decided Feb. 8, 1977); and United States v. Ford, ___ F.2d ___, No. 76-1319, Slip. Op. 1689-1703 (2d Cir., decided Feb. 3, 1977), it is clear that defendant is correct. As this circuit has interpreted Article IV(c) of the Detainers Act, a defendant once turned over to federal authorities pursuant to a writ of habeas corpus ad prosequendum to answer federal charges must be tried on the pending federal charges before being returned to state custody. Although the provisions of the Act may be waived, see United States v. Ford,

at 1698, in the absence of waiver, the return of a defendant to state custody without trial after a detainer has been lodged against him necessitates dismissal of the federal indictment.

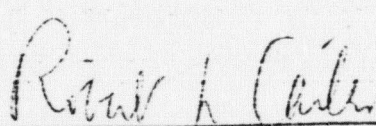
No waiver occurred here. It is true that Heimerle did not protest the government's use of a series of successive writs of habeas corpus ad prosequendum pursuant to which he was brought in federal custody to answer various charges and returned to state custody without a trial in the federal matters. As Judge Brieant stated in a companion case:

"Waiver is the intentional relinquishment of a known right. Prior to the decision of Judge Bartels [in Mauro] on May 17, 1976, who could have known?"

Heimerle v. United States, 76 Civ. 5563 (S.D.N.Y., Dec. 15, 1976). Defendant was delivered into federal custody on January 18, 1973, pursuant to a writ of habeas corpus ad prosequendum at which time he entered a plea of not guilty and was returned to state custody without first being tried on the federal indictment. He was again delivered into federal custody on May 2, 1976, pursuant to a second writ of habeas corpus ad prosequendum for pre-trial hearings and trial May 2-May 11. Since he was returned to state custody in January, 1973, without being tried on this indictment, he is entitled to dismissal of the indictment with prejudice.

SO ORDERED.

DATED: New York, New York
June 22, 1977


ROBERT L. CARTER
U. S. D. J.

UNITED STATES OF AMERICA

72 CRIM. 1 330

- v -

VINCENT RIZZO --
MATTEO DI LORENZO --
SAM SALLI
JAMES HEIMERLE
JOSEPH CALISE
WILLIAM MIZONO.

Defendants

73 - 6377

INDICTMENT

72 Cr.

RECEIVED

DEC 11 1974

CLERK OF THE COURT
SOUTHERN DISTRICT OF NEW YORK

FILED

DEC 6 1974

S. D. N. Y.

COUNT ONE

The Grand Jury charges:

1. In or about April and May 1972, in the Southern District of New York and elsewhere VINCENT RIZZO, MATTEO DI LORENZO, SAM SALLI, JAMES HEIMERLE, JOSEPH CALISE and WILLIAM MIZONO, the defendants, did unlawfully, willfully, and knowingly combine, conspire, confederate and agree, together and with each other and with diverse other persons to the Grand Jury as yet unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Sections 472, 473.

2. It was part of the conspiracy that the defendants with intent to defraud, would pass, utter, publish, sell and attempt to pass, utter, publish and sell, and keep in their possession and conceal, falsely made, forged, counterfeited and altered obligations and securities of the United States, to wit, counterfeit Federal Reserve Notes in the denominations of fifty and one hundred dollars.

3. It was further part of the conspiracy that the defendants would buy, sell, exchange, transfer, receive and deliver falsely made, forged, counterfeited and altered obligations and securities of the United States, to wit, counterfeit Federal Reserve Notes in the denominations of fifty and one hundred dollars, with the intent that the same be passed, published and used as true and genuine.

EXHIBIT 1

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4. Among the means whereby the defendants carried out the conspiracy were the following:

a. SAM SALLI would communicate with persons unknown to purchase \$600,000 in counterfeit fifty and one hundred dollar bills for sale to MATTEO DILORENZO and VINCENT RIZZO.

b. MATTEO DILORENZO, VINCENT RIZZO and SAM SALLI would communicate with each other concerning negotiations relating to said purchase.

c. VINCENT RIZZO would arrange with JAMES HEIMERLE, WILLIAM MIZONO and JOSEPH CALISE to sell \$300,000 of said counterfeit bills to buyers who would distribute them in Japan.

d. VINCENT RIZZO would obtain sample counterfeit fifty and one hundred dollar bills from SAM SALLI, and would cause them to be delivered to WILLIAM MIZONO and JOSEPH CALISE in San Francisco, California.

1 e. WILLIAM MIZONO and JOSEPH CALISE would cause said samples to be shown to prospective Japanese buyers in California.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the defendants committed and caused to be committed in the Southern District of New York and elsewhere the following overt acts among others:

1. On or about April 6, 1972, VINCENT RIZZO telephoned SAM SALLI.

2. On or about April 19, 1972, SAM SALLI telephoned MATTEO DILORENZO.

3. On or about April 14, 1972, JAMES HEIMERLE telephoned JOSEPH CALISE.

4. On or about April 14, 1972, JAMES HEIMERLE telephoned WILLIAM MIZONO.

5. On or about April 18, 1972, JOSEPH CALISE telephoned JAMES HEIMERLE.

6. On or about April 26, 1972, JAMES HEIMERLE telephoned

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7. On or about May 2, 1972, VINCENT RIZZO sent counterfeit fifty and one hundred dollar Federal Reserve Notes to JAMES HEIMERLE.

8. On or about May 3, 1972, JAMES HEIMERLE sent counterfeit fifty and one hundred dollar Federal Reserve Notes to JOSEPH CALISE.

(Title 18, United States Code, Section 371)

COUNT TWO

The Grand Jury further charges:

In or about May 1972, in the Southern District of New York, VINCENT RIZZO, MATTEO DILORENZO, SAM SALLI, JAMES HEIMERLE, JOSEPH CALISE and WILLIAM MIZONO, the defendants unlawfully, wilfully and knowingly, and with intent to defraud, did pass, utter, publish and sell, and attempt to pass, utter, publish and sell, and did keep in their possession and conceal, falsely made, forged, counterfeited and altered obligations of the United States, to wit, counterfeited fifty and one hundred dollar Federal Reserve Notes.

(Title 18, United States Code, Sections 472 and 2)

COUNT THREE

The Grand Jury further charges:

In or about May 1972, in the Southern District of New York, VINCENT RIZZO, MATTEO DILORENZO, SAM SALLI, JAMES HEIMERLE, JOSEPH CALISE and WILLIAM MIZONO, the defendants, unlawfully, wilfully and knowingly did buy, sell, exchange, transfer, receive and deliver falsely made, forged, counterfeited and altered obligations of the United States, to wit, counterfeited fifty and one hundred dollar Federal Reserve Notes, with the intent that the same be passed, published and used as true and genuine.

(Title 18, United States Code, Sections 473 and 2)

Whitney North Seymour, Jr.
WHITNEY NORTH SEYMOUR, JR.
United States Attorney for the
Southern District of New York

Harold F. Baker
FOREMAN

James Heimerle produced on Writ ~~Carroll~~ ^{Carroll}
 left waiver reading Indictments - Def. pleads not guilty
 to both Indictments. motions returnable on or before
 February 1, 1973. Indictment 72 Cr. 1331 ~~Carroll~~ ^{Carroll}
 Carter, J.

~~MAY 26 1973~~ Conference held for setting trial date. Trial to
 begin May 2, 1973 at 10 AM

MAY 2 - 1973

Hearing ~~Begin~~ as to all Defendants.

MAY 3 - 1973

Defendant James Heimerle produced on Writ.
 Def. Rizzo in custody.

MAY 3 - 1973

Hearing Continued & concluded. Decision Reserved
 Jury trial begun as to all Defendants. Before Carter

MAY 4 - 1973

Trial Continued.

MAY 7 - 1973

Trial Continued.

MAY 8 - 1973

Trial Continued.

MAY 9 - 1973

Trial Continued.

MAY 10 1973

Trial Continued

MAY 11 1973

Trial Continued + Concluded.

Jury Verdict as follows:

Jury finds Defendant Vincent Rizzo guilty on Cts 1 + 2
not guilty on Count "3".

Def. Matteo Di Lorenzo guilty on ct # 1 + not guilty
Counts 2 + 3.

Def. Sam Salli guilty on counts 1 + 2 + not guilty on
Count "3".

Def. James Heimerle guilty on counts 1 + 2 + not
guilty on count "3".

Def. Joseph Calise guilty on counts 1 + 2 + not guilty
on ct "3".

Def. William Mazono guilty on ct "1" only + not
guilty on counts 2 + 3. Jury Picked as to all Defs

Present Bail Conditions Continued

Pre-sentence report ordered as to all Defendants.

Probation notified. Defs motions Reserved until May 23, 1973
Carter, J.

Sentencing of all defts except Salli June 15, 1973. AT 10: AM

Def. Sam Salli. Sentence June 25, 1973 AT 11: AM. Room 130

JUNE 18, 1973

Atty. Present Robert Mitchell

Defendant Vincent Rizzo Sentenced to five (5) years on Counts 1 & 2 to run concurrently with each other and concurrently with the sentence the deft. presently serving. Defendant is fined \$5,000.00 on Ct "1". The deft is remanded. Present bail condition continues - pending appeal. The deft. advised of his right to appeal.

Defendant Remanded Carter, J.

Atty. Present David M. Markowitz

Def. Matter Ni Lorenzo sentenced to one (1) year on Ct 1, and fined \$10,000.00. If the fine is not paid as directed, the deft is to be committed until the fine is paid, or he is otherwise discharged according to law. The deft. advised of his right to appeal.

Carter, J.

Wm. William Mazon. It is adjudged
that the Dept. is hereby committed to the custody
of the Atty. Gen. or his Authorized Representative
for imprisonment for a period of three (3) years.
Execution of Prison sentence suspended. Defendant
is placed on supervised probation for a period of three
(3) years. Dept. is Fined \$5,000.00 & committed
fine to be paid on or before September 15, 1973.
The Court requested Periodic Probation reports
(Quarterly.)

Atty. Pres. Stanley Arkin. Carter, J.

June 25, 1973 Dept. Sam Sallie Sentenced to two @ yrs
on each of cls 1 & 2 to run concurrently.

Present bail condition continued - pending appeal.

Carter, J.
(Ru)

June 22, 1977 Pursuant to the opinion filed
on June 22, 1977 under 76 Civil 4277 and 76
Civil 5667 this indictment is dismissed

Carter, J.
J

72 CRIM 1330

Form No. USA-336-274 (Ed. 9-25-66)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

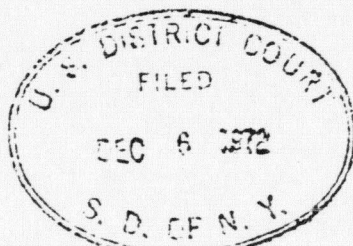
THE UNITED STATES OF AMERICA

vs.

VINCENT RIZZO,
MATTEO DILORENZO,
SAM SALLI,
JAMES HEIMERLE,
JOSEPH CALISE,
WILLIAM MIZONO,

Defendants

INDICTMENT



United States Attorney

A TRUE BILL

Foreman

FPI-SS-1-13-70-20M-4925

JUDGE CARTER

DEC 6 1972

12/7/72 Indictment called sealed.

12/7/72 Indictment called unsealed. - Holley, J.

1-7/73 M. Di Lorenzo - (Atty. David M. Murnitz present, pleads not guilty. Ordered photographed & fingerprinted. Bail fixed in the amount of \$50,000. Remanded in lieu of bail. B/w located Holley, J.)

DEC 13 1972

Deft (Mizono) pleads not guilty (Atty. present), Bail continued \$25,000

*Motion 10 days
Deft Calise pleads not guilty
Holl. Motion 10.*

Dec 20 1972 Deft Vincent Rizzo.

*Bail fixed in the amount of \$25,000.00
(on four indictments) (Atty. present)*

*JAN 5 - 1973 Deft. Sam Salli arraigned
pleads not guilty. bail fixed at \$25,000.00*

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 ----- x
4 UNITED STATES OF AMERICA :

5 vs :

72 Cr 1331

6 JOSEPH CALISE and JAMES HEIMERLE, :
7 Defendants. :
8 ----- x

9 New York, New York
10 March 29, 1973
11 2:20 o'clock p.m.

12 Before: HON. CHARLES L. BRIANT, JR.,

District Judge.

13 Appearances:

14 GERARD HINCKLEY, Esq.,
15 Special Attorney, Department of Justice,
Attorney for the Government.

16 EDWARD A. PANZARELLA, Esq.,
17 Attorney for Defendant Calise.

18 FONTANA & GEOLY, Esqs.,
19 Attorneys for Defendant Heimerle;
JOSEPH FONTANA, Esq., of counsel.

20 THE CLERK: United States of America versus Joseph
21 Calise and James Heimerle.

22 MR. PANZARELLA: Edward A. Panzarella for Joseph
23 Calise.

24 MR. FONTANA: Good afternoon; Fontana & Geoly by
25 myself, Joseph Fontana, 32 Court Street, Brooklyn.

1 jk

2 Is there anything else that you require, Mr. Panz
3 rella?

4 MR. PANZARELLA: No, sir, not at this moment.

5 THE COURT: Mr. Fontana, are all your wants and
6 needs taken care of?

7 MR. FONTANA: A similar situation; thank you,
8 sir.

9 THE COURT: The same rulings would apply to you.
10 Look over the problem carefully, go over it with
11 your clients.

12 MR. PANZARELLA: Yes, sir.

13 THE COURT: And see what you think should be done
14 the matter. The trial date for Judge Carter is what?

15 MR. PANZARELLA: May 2nd.

16 THE COURT: May 2nd. All right.

17 MR. PANZARELLA: Yes, sir.

18 THE COURT: Did I interrupt somebody?

19 MR. FONTANA: I have a problem. Mr. Heimerle is
20 lodged in Sing Sing, so that is the only problem I would have
21 with his making trips up and forth.

22 THE COURT: I will have to issue a writ for him,
23 that is all. He doesn't come any farther to come here than
24 I do. They will bring him down.

25 MR. HINCKLEY: Your Honor, if I may, on March 19th

FILED

JUL 27 1977

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

ROBERT C. TUCKER
CLERK

77-1126

September Term, 1976

Ernest Richard Speed, Jr.,)
)
 Appellee,)
)
 vs.)
)
United States of America,)
)
 Appellant.)

Appeal from the United States
District Court for the
Western District of Arkansas.

On motion of appellant it is now here ordered that this appeal
be, and it is hereby, dismissed.

Mandate forthwith.

July 27, 1977

A

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

ERNEST RICHARD SPEED, JR.

PETITION

v.

No. T-76-10-C 7

UNITED STATES OF AMERICA

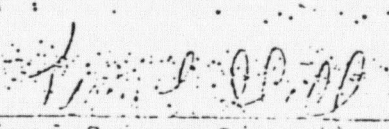
RESPONSE

ORDER

In accordance with the Findings of Fact and Conclusions of Law filed this date,

IT IS ORDERED, ADJUDGED AND DECREED that the petition of Ernest Richard Speed, Jr. be, and it is hereby, granted, and the sentence imposed on him in criminal case No. T-73-CR-26 in the Western District of Arkansas, Texarkana Division, on December 7, 1973 be, and it is hereby, vacated and set aside.

IT IS SO ORDERED this 15 day of December, 1976.


United States District Judge

39

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

ERNEST RICHARD SPEED, JR.

PETITIONER

v.

No. T-76-10-C

UNITED STATES OF AMERICA

RESPONDENT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This action is a petition for a Writ of Habeas Corpus filed pursuant to Title 28 U.S.C. § 2255. A hearing was held on November 22, 1976 in Little Rock, Arkansas as agreed by all parties.

From the testimony presented at the hearing and written briefs, this Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. Petitioner Ernest Richard Speed, Jr. was convicted of the crime of robbery in June of 1973 by the Nevada County Circuit Court, Prescott, Arkansas and sentenced to a term of ten (10) years, three of which were suspended.

2. On August 14, 1973, an indictment was filed in the Western District of Arkansas against the petitioner, charging with a violation of Title 18 U.S.C. § 2114. A detainer was issued with the Arkansas Department of Correction, as petitioner was incarcerated at the Cummins Unit of the Arkansas Department of Correction.

3. On August 29, 1973, an Order for a Writ of Habeas Corpus

40 - arraignment and entered a plea of not guilty on September 17, 1973. He was thereafter returned to the Arkansas Department of Correction on September 19, 1973.

4. On October 16, 1973, an Order for a Writ of Habeas Corpus Ad Prosequendum was again issued directing the United States Marshal to bring the petitioner before the United States District Court for trial on November 5, 1973. Petitioner did so appear and withdrew his plea of not guilty and entered a guilty plea. The Court accepted that plea and returned the petitioner to State custody on November 7, 1973.

5. On November 28, 1973, the Court again issued a Writ of Habeas Corpus Ad Prosequendum to the United States Marshal to produce the petitioner before the Court on December 7, 1973. Petitioner appeared in court on that date and was sentenced to term of twenty-five (25) years under the provisions of Title 18 U.S.C. § 4208(A)(1), five years fixed as the time after which petitioner could become eligible for parole. Petitioner was then returned to the Arkansas Department of Correction to complete the service of his State sentence.

CONCLUSIONS OF LAW

1. The United States of America is a party to the Interstate Agreement on Detainers, Title 18 U.S.C. Appendix.
2. The State of Arkansas is a party to the Interstate Agreement on Detainers, Ark.Stat.Ann. § 43-3201.
3. Article IV(e) of the Interstate Agreement on Detainers provides:

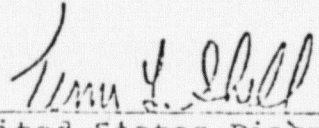
"If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to the provisions of this agreement, the prisoner shall be deemed to have been tried and sentenced."

4. The United States invoked the provisions of the Agreement by use of the writ of habeas corpus ad prosequendum. *U.S. v. Mauro*, 414 F.Supp. 358 (E.D. N.Y. 1976); *U.S. v. Ricketson*, 498 F.2d 367, 373 (7th Cir. 1974); *U.S. ex rel. Esola v. Groomes*, 52 F.2d 830 (3d Cir. 1975).

5. The United States did not comply with Article IV(e) of the Agreement in that the petitioner was three times removed from the Cummins Unit of the Arkansas Department of Correction, placed in custody of the federal government and returned to State custody.

The petition will be granted, and the sentence imposed on him in criminal case No. T-73-CR-26, Western District of Arkansas, Texarkana Division, on December 7, 1973 will be vacated and set aside.

Dated this 15 day of December, 1976.


United States District Judge.

AFFIDAVIT OF MAILING

JAMES F. HEIMERLE, being duly sworn, deposes and says: I have on this 23 day of December, 1977 placed into the hand of the undersigned prison official a true and correct copy of the Appellant's Brief and Appendix in re 77-2131 addressed to the Hon. Robert B. Fiske, Jr., U.S. Attorney/S.D.N.Y., U.S. Courthouse-Foley Square, New York, N.Y. 10007 to be sent via the U.S. Mail.


James F. Heimerle
petitioner-appellant
PMB 01873
Atlanta, Ga. 30315

Sworn to before me this

23 day of December, 1977

By H. R. Miller Act of
Notary Public for the State of Georgia